PILLSBURY WINTHROP SHAW PITTMAN LLP
Cecily A. Dumas (State Bar No. 111449)
2600 Capitol Avenue, Suite 300
Sacramento, CA 95816-5930
Telephone: (916) 329-4700
Facsimile No.: (916) 916-3583
cecily.dumas@pillsburylaw.com
[Proposed] Counsel for the Debtor and Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

FRESNO DIVISION

IN RE: HORISONS UNLIMITED, Debtor.	Case No. 17-11824 ( ) Chapter 11 Docket Control Number CAD-1 Date: Time: Department: U.S. Bankruptcy Court Eastern District of California 2500 Tulare Street, Suite 2501 Fresno, California 93721 Judge:

DECLARATION OF DANIEL KAZAKOS IN SUPPORT OF THE DEBTOR'S CHAPTER 11 PETITION AND REQUESTS FOR FIRST DAY RELIEF

Pursuant to 28 U.S.C. § 1746, I, DANIEL KAZAKOS, MAcc, declares as follows:

I. INTRODUCTION.

1. I am at least 21 years of age and am competent to give this declaration. In addition to the personal knowledge that I have acquired while working with the above-captioned debtor and debtor-in-possession, HORISONS UNLIMITED ("**Debtor**" or "**Horisons**"), I have knowledge of and familiarity with the Debtor's books and records as well as its financial and operational affairs. Except as otherwise indicated, all statements in this declaration are based

upon my personal knowledge, my review of the Debtor's books and records, and other relevant documents and information prepared or collected by the Debtor's employees. In making the statements herein, based upon the foregoing, I have relied in part upon others to accurately record, prepare, and collect any such documentation and information.

2. I am the Chief Financial Officer ("**CFO**") of the Debtor. I have been a member of the Debtor's management team since June 2016.

3. I submit this declaration (the "**First Day Declaration**") in support of the Debtor's petition and "first-day" motions (collectively, the "**First Day Motions**").

4. As CFO, I am authorized to submit this Declaration on behalf of the Debtor. If I were called to testify as a witness in this matter, I could and would competently testify to each of the facts set forth herein based upon my personal knowledge and review of documents or upon my professional opinion.

5. On the date hereof (the "**Petition Date**"), the Debtor filed a voluntary petition in the United States Bankruptcy Court for the Eastern District of California (the "**Court**"). The Debtor will continue to operate its business and manage its properties as Debtor-in-possession.

6. I submit this First Day Declaration on behalf of the Debtor in support of (i) the Debtor's voluntary petition under title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended (the "**Bankruptcy Code**"), and (ii) the Debtor's First Day Motions. The Debtor seeks the relief set forth in the First Day Motions with the goal of minimizing the adverse effects of the commencement of this chapter 11 case on its estate.

II. HORISONS' BACKGROUND.

A. Business Operations.

7. Founded in 2004, Horisons is a 501(c)(3) California nonprofit public benefit corporation with its principal place of business in Merced, California (in particular, Horisons' main office is located at 936 W. Main St. Merced, California 95340). Horisons provides, among other things, outpatient primary health services to underserved populations and public education

regarding healthcare issues ("**Health Services**"). As stated in its Bylaws, Horisons' Mission Statement is:

> Section 1. Name and Mission. The name of this corporation is Horisons Unlimited and its mission is:
>
> To provide Compassionate, Competent and Cost-effective Care to the Community through excellence in service and Christian Love; and to help improve healthcare for rural, multi-cultural and ethnically diverse and underserved communities in and around the Central Valley in California.

8. Consistent with its Mission Statement, Horisons provides Health Services primarily at seven outpatient clinics located throughout the greater California Central Valley region (*i.e.*, Chowchilla, Livingston, Los Baños, Merced, Mariposa, Newman and Patterson).[1] In addition, Horisons provides limited at-home Health Services (that is, instances where our providers visit patients at their homes).

9. Through fiscal year ended December 31, 2016, Horisons generated revenues of approximately $11,725,000 through its provision of Health Services. Revenues for the first four months of 2017 (*i.e.*, January-April) were approximately $2,500,000; but Horisons projects total revenues of approximately $1,600,000 for the remaining eight months of 2017 (*i.e.*, May-December 2017).

B. Management.

10. Horisons was formed as a public benefit corporation by Sandra Haar ("**Ms. Haar**"). From the formation until February 2017, Ms. Haar acted as the CEO of Horisons. Ms. Haar was not, however, the only member of her family that she employed at Horisons. Rather, Ms. Haar employed her family at Horisons as follows:

[1] Two other clinics (Gustine and Riverbank) are currently under repair.

a. Norman Haar (husband): former CFO, former employee with nominal duties, and landlord on certain Horisons real property leases (that is, he owns buildings which Horisons leases from him);

b. Sara Price (daughter): former Director, former employee, and named principal of contracted vendor, Medical Billing Consultants (which purportedly provided billing services to Horisons);

c. Katie Haar (daughter): former Supervisor;

d. Jessica and Amber Buchanan (daughters): former Administrators;

e. Karen Tlemcani (sister): former Billing Manager;

f. Kevin Price (son-in-law): former Supervisor; and

g. Carrie Rodriquez (sister-in-law): former Bookkeeper.

11. As of the Petition Date, Horisons' core management team consists of: Gurdeep Singh (Chief Operating Office), Ellen Zoschak, MPH, MS, RN, NEA-BC (Chief Clinical Officer), Bonnie Carl, RN, MBA (Chief Compliance Officer), Kelly Sharrar, MD (Chief Medical Officer) and myself (CFO). Overall, Horisons has 174 employees throughout the California Central Valley and surrounding communities.

C. Related Party Transactions.

12. Horisons is not the named owner of any of the buildings in which its clinics are located. Instead, Horisons rents its clinic spaces, and in many instances, Ms. Haar (or one of her family members) owns the building. For example, Mr. or Ms. Haar is the landlord of the buildings in which the following eight Horisons clinics are located: (i) Chowchilla, (ii) Gustine, (iii) Merced, (iv) Livingston, (v) Los Baños, (vi) Mariposa, (vii) Newman and (viii) Riverbank.

13. Those leases are not the only related-party transactions. For example, in Paragraph 17, below, I identify several instances where—without the knowledge of Horisons' Board of Directors—the company provided substantial cash transfers to Ms. Haar (or her family members).

III. EVENTS LEADING TO THE COMMENCEMENT OF THIS CASE.

A. HRSA's February 2017 Site Visit to Horisons.

14. On December 21, 2016, the Health Resources and Services Administration of the United States Department of Health and Human Services ("**HRSA**") contacted Horisons via email to Ms. Haar. HRSA's email (i) advised Horisons that HRSA's Operational Site Visit Team ("**OSV Team**" or "**Government**") would be conducting a site visit and audit in February 2017 to evaluate Horisons' compliance and operations and (ii) requested certain documents and information in advance of the February 2017 visit.

15. That morning (Dec. 21, 2016), I reviewed the HRSA email with Ms. Haar and several other employees. During the course of our review, I witnessed Ms. Haar suffer what appeared to be a stroke. Haar was rushed to the hospital that day.

16. As a result of Ms. Haar's medical condition, Horisons placed her on medical leave (effective December 21, 2016).

17. As a result of Ms. Haar's leave of absence, I gained unrestricted access to Horisons' Records.[2] And as a result of that unrestricted access, I began to identify a number of transactions and business dealings involving Ms. Haar that were concerning and questionable, such as:

a. Ms. Haar authorizing, paying and receiving excessive personal salary and benefits without the Board's knowledge;

b. Ms. Haar authorizing, paying and receiving an undocumented loan from the Company in 2010 in the amount of $758,346 purportedly to enable her and her family to purchase properties that were then to be leased to and occupied by Horisons;

c. Ms. Haar authorizing and establishing self-serving lease arrangements between Horisons and Haar Properties and other Haar entities, believed to be owned by Norman Haar, Ms. Haar's husband, and Ms. Haar;

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[2] In addition, as a result of Ms. Haar's medical leave, Horisons' Board made Horisons' then-Chief Operating Officer Cylia Estrada ("**Estrada**") Horisons' "Acting CEO" on January 18, 2017.

d. Ms. Haar establishing undocumented, self-serving, employee lease arrangements between Horisons and other companies owned by Ms. Haar, Norman Haar, Sara Price, and/or other agents acting in concert with Ms. Haar.

e. Ms. Haar establishing self-serving, vendor relationships between Horisons and other companies owned by Ms. Haar, Norman Haar, Sara Price, and/or other agents acting in concert with Ms. Haar.

18. The Government's visit I referenced above in Paragraph 14 occurred on February 7-9, 2017. On the first day of the visit, I provided the Government with documents and information related to the transactions I outlined above in Paragraph 17.

19. The Government team's audit separately and independently identified potential self-dealing transactions involving Ms. Haar and Horisons.

20. Furthermore, on February 8, 2017, the OSV Team presented its preliminary audit findings to Horisons' Board. I did not attend the OSV Team's presentation to our Board; but, as a result of the Government's presentation, the Board immediately resolved to:

a. Suspend Ms. Haar (without pay) and ;

b. Suspend certain Haar employee-family members (with pay);

c. Elevate Estrada from "Acting CEO" to "Interim CEO;" and,

d. Give Estrada and me authority to sign instruments on behalf of and bind Horisons.

21. On April 9, 2017, the Government provided Horisons with a draft of its written report for the February 2017 Site Visit. Among other things, the draft OSV report details Horisons' non-compliance with 16 of 19 federal Health Center requirements. On May 8, 2017,

the Government provided Horisons with the final version of its OSV report. Among other things, the Government continues to find Horisons' violation of 16 of 19 program requirements.

B. DHCS's Suspension of Medi-Cal Patient Reimbursement to Horisons.

22. By letter dated February 27, 2017, California's Department of Health Care Services ("**DHCS**") advised Haar and Horisons that, among other things: (i) DHCS was temporarily suspending 100 percent of all Medi-Cal payments to Horisons; (ii) DHCS was suspending and deactivating Horisons' National Provider Identifier; and (iii) the California Department of Justice was investigating Horisons for "fraud and abuse."

23. In an effort to convince DHCS to lift its suspension of Horisons' Medi-Cal reimbursements, Horisons' held a "meet and confer" with DHCS on Tuesday, May 2, 2017. Horisons' presented its improved quality of care, compliance program and operations to DHCS during the May 2 meet and confer. Although it appeared pleased by Horisons' improvements to quality of care and compliance, DHCS did not lift the suspension of Horisons' Medi-Cal reimbursements; and DHCS gave no assurances whatsoever that the suspension would be lifted in the near-term or ever.

C. The Other Ongoing Governmental Investigations of Horisons.

24. On or about February 27, the United States Attorney's Office for the Eastern District of California advised counsel for Horisons that it was conducting "a civil investigation concerning whether Horisons Unlimited Health Care Inc., Horisons Unlimited Inc., Medical Billing Consultants Inc., and related entities and individuals (collectively "Horisons"), violated the False Claims Act, 31 U.S.C. §§ 3729, et seq., equity, and/or the common law by falsely submitting claims for medical services to Medi-Cal and Medicare."

25. On March 2, 2017, Horisons' counsel met with representatives of the civil and criminal divisions of the United States Attorney's Office, as well as representatives of the California Bureau of Medicaid Fraud and Elder Abuse, and the California Department of Health Care Services. At this meeting, Horisons' counsel was informed that these agencies were

investigating Ms. Haar and Horisons Unlimited. On March 14, Horisons received a civil investigative demand from the United States Attorney's Office, which stated that it was investigating allegations that "Horisons Unlimited, Inc., … Horisons Unlimited Healthcare, Inc., … Medical Billing Consultants, Inc., St. Thomas Emergent Services, Inc., St. Thomas Dental Group, Inc., and Haar properties (collectively, "Horisons") as well as Ms. Haar, Norman Haar, and Sarah Price (the "Haars") have submitted, or caused to be submitted, false claims the the U.S. Government for non-rendered, excessive, medically unnecessary, and/or inadequately documented procedures," and that "[t]he general purpose for which this Civil Investigative Demand is issues is to discover [Horisons'] knowledge of any of the alleged fraudulent activities committed by Horisons and the Haars." I understand that all of these investigations are still ongoing, and Horisons has been cooperating with them. The United States Attorney's Office has not confirmed or denied that there is an ongoing criminal investigation by any of these entities; however, since at least February 2017, and to my understanding starting even in 2016, criminal investigative agents from the FBI and from the California Attorney General's Office have been conducting interviews of current and former Horisons employees. Horisons has likewise been cooperating with the investigation by these criminal investigators.

D. Litigation Regarding Governance of Horisons.

26. On March 3, 2017, Ms. Haar and others working with her entered Horisons' Merced headquarters, accompanied by a locksmith, cut and picked locks, and occupied the premises. Later that day, Horisons filed a civil complaint in *Horisons Unlimited, Inc. v. Sandra Haar, et al.*, Case No. 17cv-00633 (California Superior Court, County of Merced), alleging trespass, breach of fiduciary duty, and other causes of action, and seeking return of assets, damages, and a determination by the court of the identity of the proper board members; and requesting a temporary restraining order ("TRO") against Ms. Haar, certain family members, and any other individuals acting in concert with Ms. Haar. The court granted the TRO, which remains in place as of the Petition Date.

27. On April 19, 2017, Horisons requested that the court issue an order to show cause ("OSC") re contempt to determine whether Haar had violated the TRO by seeking to obtain access to Horisons' systems. On April 21, 2017, the court issued the OSC and set a hearing for May 15, 2017 at 1:30 p.m.

28. On or about March 24, 2017, a complaint was filed in the action styled, *Anzai, et al. v. Horisons Unlimited, Inc., et al.*, Case No. 17cv-00916 (California Superior Court, County of Merced), by several purported board members seeking to challenge the termination of certain purported board members, and the election of other board members, and seeking a determination from the court of the identity of the true board members. [3]

E. Ms. Haar's Interference with Debtor's Financial Institutions.

29. Debtor manages its finances through a cash management system (the "**Cash Management System**"). As of the Petition Date, the Cash Management System includes five deposit accounts (three separate accounts with JP Morgan Chase, one account with Bank of America, and one account with Citibank) the collection of receivables in USD from payors. These five accounts contain substantially all of our cash receipts. The Cash Management System also includes an operating account with BBVA Compass; this operating account funds all of Horisons' operations. My team reconciles cash receipts on a bi-weekly monthly basis using QuickBooks.

30. As of the Petition Date, our BBVA operating accounts contain approximately $259,756.70. I estimate that, by Monday, May 15, 2017, those accounts will have been depleted to approximately $25,700.00.[4]

31. Horison's deposit accounts with Bank of America, JP Morgan Chase, and Citibank have either been depleted or frozen.

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[3] In addition, Debtor is defending seven actions by former employees asserting a variety of claims (*e.g.*, worker's compensation, wrongful termination).

[4] Moreover, based on my knowledge of Horisons' financial circumstances and our operating expenses, I estimate that, as of Monday, May 15, 2017, we will have approximately $22,000 of available cash on hand.

a. Ms. Haar Depletes Bank of America. As referenced above, Horisons' Board removed Ms. Haar as Horisons' CEO on February 8, 2017. I learned in the past month, however, that on February 22, 2017 Ms. Haar visited the Bank of America branch and convinced one of its representatives to issue a check for the full account balance ($117,155.97) payable to Ms. Haar's for-profit entity "Horisons Unlimited Healthcare." I requested Bank of America to issue a stop payment on those funds; as of the Petition Date, I am unaware of any action Bank of America has taken in response to my request.

b. Citibank Freezes Account in Response to Letter from Counsel. By letter date February 24, 2017, Adam Miller, Esq. (whom I believe represents Ms. Haar's interests) wrote Citibank stating "This is a demand that you immediately freeze the above referenced account and any other accounts held by Horisons Unlimited at Citibank." Mr. Miller's letter continued, "You are hereby put on notice that the failure to freeze Horisons Unlimited's accounts may result in a waste of charity assets which we will seek reimbursement from Citibank." As a result of Mr. Miller's letter, Citibank has frozen Horisons' account pending court order.

c. JP Morgan Chase Freezes Accounts. Finally, JP Morgan Chase froze two Horisons accounts totaling approximately $2,300,000. I understand the bank froze our funds because of the outstanding litigation referenced above in Paragraph 28.

F. Cash Flow Crisis Due to Freeze on Funds.

32. As referenced above in Paragraph 26, as of the Petition Date, I estimate that, by Monday, May 15, 2017, Horisons will have approximately $22,000 of available cash.

G. Potential Transaction.

33. On May 1, 2017, Horisons received a letter of interest from a viable buyer of Horisons' assets. This was the first solid opportunity that I have been able to achieve in my role as CFO in pursuing strategic options for Horisons. Among the considerations the prospective buyer indicated was the desire that a transaction may be achieved through a free and clear sale order in a bankruptcy sale. It is my understanding that the many challenges faced by Horisons, including governmental investigations, the current suspension of Medi-Cal reimbursements, misfeasance by former insiders and governance disputes, will present difficulty in achieving a sale transaction unless the buyer is assured that it will be able to accomplish an ownership transition.

III. FIRST DAY MOTIONS.

34. Debtor is making the following three First Day Motions.

A. Cash Management Systems.

35. By this First Day Motion, Debtor respectfully requests that the Court authorize the maintenance of Debtor's bank accounts and its existing use of its business forms and checks, including the continued use of an existing cash management system.

B. Employee Wages.

36. By this motion, Horisons respectfully requests relief from the Court to authorize the payment of employee wages beginning on April 29, 2017 through the filing of this Petition. Horisons has paid its employees through and including April 28, 2017, but has not paid any wages from April 29, 2017 through the date of this Petition.

C. Patient Care Ombudsman.

37. By its third and final First Day Motion, Horisons respectfully asks the Court to appoint a Patient Care Ombudsman ("**Ombudsman**") pursuant to Bankruptcy Code section 333(a)(1). More specifically, although Horisons has an excellent management team and staff (including the core management team identified above in Paragraph 11), we respectfully

recognize that the Court may believe the appointment of an Ombudsman would be prudent under the circumstances. Accordingly, Debtor makes this third and final First Day Motion.

D. Conclusion Regarding First Day Motions.

38. I have reviewed the First Day Motions, and believe the factual information included in each to be true and correct. For the reasons described herein and in the First Day Motions, I believe that the prospect for achieving a result in the interests of creditors will be substantially enhanced by the Court granting the relief requested in each of the First Day Motions and I respectfully request the Court to do so.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: May 10, 2017

/s/
Daniel Kazakos
Chief Financial Officer
Horisons Unlimited